

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda # III.A.1

Agenda Item Summary: ARM 17.8.335 prohibits the department from taking enforcement action for violations of various rules at existing aluminum plants when control equipment is bypassed during scheduled maintenance of the equipment. The Board has proposed amending the rule to specify that the enforcement prohibition does not apply to enforcement of the national emission standards for hazardous air pollutants for primary aluminum reduction plants (the MACT standard).

List of Affected Rules: This rulemaking would amend ARM 17.8.335.

Affected Parties Summary: The proposed rule amendment could affect the Columbia Falls Aluminum Company's primary aluminum reduction plant.

Scope of Proposed Proceeding: The Board is considering final action on adoption of an amendment to the above-referenced rule as proposed in the Montana Administrative Register.

Background: On July 26, 2002, the Board adopted New Rule I, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, which was codified as ARM 17.8.335. The rule prohibits the department from taking enforcement action for violations of various rules, including emission limits, which occur where control equipment is bypassed at aluminum plants during scheduled maintenance.

The proposed revision to the state implementation plan, was submitted to EPA on January 16, 2003. On October 29, 2003, EPA proposed to disapprove this SIP revision (Federal Register Volume 68, Number 209, pages 61650-61654). Among other comments regarding the proposed disapproval, EPA expressed two concerns regarding the interaction of ARM 17.8.335 with the MACT standard. The first concern is that the state may impact its automatic delegation of the MACT standard because the new rule could be interpreted to alter the requirements of the delegated MACT standard. EPA's MACT standard does not have any provision for exempting excess emissions during a maintenance event. Any excess emissions have to be reported and enforcement discretion used in determining what, if any, penalty is appropriate for the event. The MACT standard was automatically delegated to the state under the condition that the state's rule is identical to the EPA rule (40 CFR 63.91(a)(1)). If changes are made, the automatic delegation could be withdrawn.

EPA's second concern is that by adopting ARM 17.8.335, the state has rules with conflicting requirements – one set in the MACT standard adoption and one set in this SIP rule, leading to confusion for the source and the public as to which one applies.

The amended rulemaking adds language to ARM 17.8.335 to address EPA's MACT concerns by specifying that the enforcement prohibition does not apply to enforcement of the MACT standard. The rulemaking does not address all of EPA's concerns with ARM 17.8.335.

Although this rule amendment does not address all of the concerns that EPA has with the CFAC

maintenance rule (ARM 17.8.335), the Department believes it is important to act quickly to address any EPA concerns about the Department's ability to enforce the MACT standard.

Hearing Information: A hearing in the matter was conducted before Thomas Bowe on December 1, 2004. Comments were received from EPA. The Presiding Officer's Report and draft Notice of Amendment are attached to this executive summary.

Board Options: The Board may:

1. Adopt the proposed amendment as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Adopt the proposed amendment with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendment.

DEQ Recommendation: The Department recommends that the Board adopt the proposed amendment as set forth in the original Notice of Public Hearing on Proposed Amendment.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment;
2. Presiding Officer's Report; and
3. Draft Notice of Amendment.